

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 27592-00837-US	
		Application Number 10/773,287-Conf. #8738	Filed February 9, 2004
		First Named Inventor Arto Palin et al.	
		Art Unit 2618	Examiner W. W. Huang
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 60%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>44,457</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 35%; text-align: center;"> <p>_____ /Jeffrey W. Gluck/ Signature</p> <p>_____ Jeffrey W. Gluck Typed or printed name</p> <p>_____ (202) 331-7111 Telephone number</p> <p>_____ June 16, 2009 Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.			

Remarks in Support of Pre-Appeal Brief Request for Review

Claims 26, 27, 31-35, 39-43, 45 and 50-55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2002/01679931 to Jang et al. (hereinafter “Jang et al.”) in view of U.S. Patent No. 6,256,334 to Adachi (hereinafter “Adachi”). Claims 28, 36 and 44 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jang and Adachi as applied to claims 26, 34 and 42 and in further view of U.S. Patent Publication No. 2003/0206561 to Schmidl (hereinafter “Schmidl”). Claims 30, 38 and 46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jang and Adachi as applied to claims 26, 34 and 42 and in further view of U.S. Patent No. 6,333,937 to Ryan (hereinafter “Ryan”). Claims 47 and 48 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jang and Adachi as applied to claim 42 and in further view of U.S. Patent No. 7,110,472 to Sakoda (hereinafter “Sakoda”). Claim 49 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Jang and Adachi as applied to claim 42 and in further view of U.S. Patent Publication No. 2003/0078006 to Mahany (hereinafter “Mahany”). These rejections are respectfully traversed for at least the following reasons.

Applicants respectfully submit that independent Claims 26, 34, and 42, from which all other claims depend, all contain elements that are not disclosed or suggested by the combination of Jang et al. with Adachi. For example, Claim 26 includes the recitation, “transmitting data on a transmit frequency band of said selected frequency hopping pattern if said energy level indicates a particular condition of said monitored frequency band, wherein a timing of further data transmission according to the selected frequency hopping pattern is determined based on a time at which the particular condition is met.” Similarly, Claim 34 includes the recitation, “means for transmitting data on a transmit frequency band of said selected frequency hopping pattern if said energy level indicates a particular condition of said monitored frequency band, wherein a timing of further data transmission according to the selected frequency hopping pattern is determined based on a time at which the particular condition is met.” Finally, Claim 42 includes the recitation, “wherein a timing of further data transmission according to the selected frequency hopping pattern is determined based on a time at which the particular condition is satisfied.”

At page 3, the Office Action admits, “Jang [et al.] is silent to teaching that wherein a timing of further data transmission according to the selected frequency hopping pattern is determined based on a time at which the particular condition is met,” in connection with the rejection of Claim 26. Similar statements are found in the Office Action at pages 5 and 7, regarding the other independent claims. In each case, however, the Office Action alleges that Adachi, at col. 17, lines 48-60, teaches the claim elements not taught by Jang et al. Applicants respectfully disagree.

In order to understand the cited portion of Adachi, it is necessary to start at col. 17, line 20. Following from lines 20-60, Adachi explains that when a base station is activated, it sends out a probe to determine if there are nearby base stations (see lines 25-33). If the probe is received by a neighboring base station, a probe response signal will be received from the neighboring base station (see lines 34-40). If a probe response signal is received, “the search section 50a obtains, from the received probe response, the pattern and time (the timer value) of frequency hopping performed in another radio LAN 10 (another radio base station 1)” (lines 49-53). Then, “[t]he FH selection/setting section 50b selects, as the frequency hopping pattern of the radio base station itself, a frequency hopping pattern which is completely the same as that of the thus-obtained frequency hopping..., and sets the timer 50c to a value different from the timer value (time) obtained from the probe response signal” (lines 53-58). In other words, the timing of frequency hopping is based on the time value of a received signal, providing the timing information of a neighboring LAN. ***This is completely different from the claim elements noted above***, in which “a timing of further data transmission according to the selected frequency hopping pattern is determined based on a time at which the particular condition is met.” The phrase, “the particular condition,” refers to the condition that is based on detection of an energy level of the monitored frequency band (in particular, for example, in Claims 26 and 34, we have, “said energy level indicates a particular condition of said monitored frequency band;” in Claim 42, we have, “to determine if the one or more detection signals indicate that a particular condition has been satisfied by the monitored frequency band,” where “the one or more detection signals” are received from “a sensing module to monitor an energy level of a monitored frequency band of a selected frequency hopping pattern”). There is simply no such “condition” met in Adachi, based on an

energy level, and from whose timing (i.e., the time at which the condition is met) a timing of further data transmission is determined; timing in Adachi is determined based on a received timing indication.

The Advisory Action mailed on June 2, 2009 appears to argue that the “condition” of the claims is when the signal is received and that a timer (relating to future data transmission) is set if the signal is received. However, this interpretation of the cited references (particularly, Adachi) fails in at least two ways. First, the reception of a signal is not the same as a condition relating to a detected energy level, as discussed above. Second, if the timer of Adachi is being set based on information in the received signal, it is not being set based on a time when the at which the signal is received (i.e., the timing of further data transmission in Adachi is not based on when the signal is received, which the Office Action/Advisory Action are interpreting as the “condition,” but rather on data contained in the signal).

Applicants further note that they have not found any teachings in the other cited references that would remedy these shortcomings of Jang et al. and Adachi.

For at least these reasons, it is respectfully submitted that Claims 26, 34, and 42, as well as all other claims (which depend from these claims) are allowable over the cited references.

Disclaimer

Applicants may not have presented all possible arguments or have refuted the characterizations of either the claims or the prior art as found in the Office Action. However, the lack of such arguments or refutations is not intended to act as a waiver of such arguments or as concurrence with such characterizations.